

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRENDA DRAGOVICH,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

ORDER

16-cv-796-wmc

Plaintiff Brenda Dragovich filed an appeal of the Social Security Commission's denial of disability benefits. Before the court is defendant's motion to dismiss for failure to state a claim upon which relief may be granted. (Dkt. #6.) Directing the court to pertinent documents in the record -- namely the Appeals Council September 23, 2016, notice of a denial of benefits -- defendant contends that plaintiff's filing of this appeal is time-barred pursuant to 42 U.S.C. § 405(g). That provision provides that a civil action seeking review of a final decision denying benefits must be commenced within 60 days. *Id.*; *see also* 20 C.F.R. § 404.981. Since plaintiff is presumed to receive the notice within five days of its issuance, 20 C.F.R. § 404.901, plaintiff was required to file her civil action by November 28, 2016. Instead, she filed it three days later on December 1, 2016. (Compl. (dkt. #1).)

Plaintiff's complaint contains no allegation that she requested an extension, nor does she offer any reason why equitable tolling would be warranted. Moreover, any opposition to the motion to dismiss was due on or before March 3, 2017, and plaintiff failed to file any response. As such, the court deems her silence as an implicit concession that her appeal is time-barred.

Accordingly, the court will grant the motion to dismiss. Should plaintiff believe she has good cause for an extension, she may still request an extension of the time to file her appeal from the Appeals Council under 20 C.F.R. § 422.10.

Accordingly, IT IS ORDERED that defendant Acting Commissioner Nancy A. Berryhill's motion to dismiss (dkt. #6) is GRANTED. The clerk of court is directed to close this case.

Entered this 12th day of May, 2017.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge